Adeshwar & Company vs. State of Rajasthan & Ors.

SB Civil Writ. Petition No.4363/2006

Date of Order: 20th September, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.N.M.Ranka, Senior Advocate, with
Mr. M.R.Singhvi for the petitioner/s.
Mr.M.C.Bhoot for caveator, Municipal Corporation , Jodhpur.

BY THE COURT:

This writ petition has been filed by the petitioner alleging inter alia that the firm in question has purchased a property from His Highness Maharaja Gaj Singh by a registered sale deed dated 18.06.90 which was registered on 02.07.90 and thus the petitioners are the owners of the property in question. While the erstwhile owner of the property possessed the same, an application was moved by him under Section 20 of the Urban Ceiling Regulation Act, 1976 (hereinafter referred to as 'the Act of 1976'). In this application, the petitioner wanted that the land measuring 7204 sq. meter be granted exemption under Chapter III of the Act of 1976 because the petitioner wanted to use the land for hotel and

commercial purposes. Thus a letter was issued by the State Government having been produced with the writ petition as Annx.1 stating inter alia that the land is permitted to be exempted under Chapter III for being used as hotel and commercial purposes. This was also stated in the letter that within six months petitioners will be required to present maps and within three years construction will have to be completed. This was also stated in Annx.1 that if any of the conditions is violated then permission will be withdrawn. The petitioner felt that since it was a very big piece of land , therefore, for the purpose of its development it was by and large divided into seven blocks. In the first instance an application was moved by it to the UIT., Jodhpur for Block 'A' and permission was granted as Annx. 2. The petitioner has claimed that the construction as per Annx. 2 has already been completed.

The petitioner has further claimed that though the State Government has accorded permission to use the land for hotel and commercial purposes vide Annx.1, UIT, Jodhpur levied a fee/ Tax of flat rate of Rs.10/-per square meter as conversion charges for commercial use. The petitioner paid the amount as demanded by the UIT for the portion then sought to be used. Subsequent to the development as alleged earlier, the petitioner firm thought of

developing the rest of the land. It was to be converted into the shape of a big Mall where there were four Multiplexes proposed apart from the, Retail Marketing and Entertainment spaces for which every procedural formalities were sought to be completed by the petitioners.

An application was moved before the Building Committee constituted under the Rajasthan Municipalities Act, 1959 (hereinafter referred to as 'the Act of 1959'). The application was considered and permission for Multiplex Mall construction was granted. The Building Committee , after considering the entire record, approved the blue print and extended all required facilities. The file then got referred to various officials of the Department who examined it . A sum of Rs. 9 Lacs and odd were deposited by the petitioner as demanded by the Municipal Board. Thereafter the construction work was started and the petitioner has spent more than 1 crore of rupees on the construction. The property, according to the petitioner is a free hold property therefore , no conversion charges were liable to be levied and the amended Section 173 (a) of the Act of 1959 has no application. The petitioner has though averred in paragraph 20 of the writ petition as follows:

> "20. That it may be recapitulated that at the time of grant of permission even by UIT, Jodhpur, the entire land was subjected for payment of conversion charges, which has already been paid, therefore, the entire land has been converted for commercial purposes. Simply on account of transfer of area to the Municipal Corporation , the Municipal Corporation will not get any right to realize and levy conversion charges. Not only this, even at the time of considering the application for grant permission to raise construction, this aspect too was again taken into consideration and in unequivocal terms, it has been recorded that under the Act of 1976, exemption has already been granted by the State Government for using the entire land as hotel and commercial purposes, therefore , now no conversion charges can be levied and, thereafter, the maps were approved . In this way, the things have attained the finality with the issuance of letter dated 14.02.2006 permitting the petitioner to raise construction. Therefore, the things have come to an end so far as Municipal authorities are concerned."

On the basis of the aforesaid facts, the petitioner claims that the Building Committee which is constituted under Section 73 of the Act of 1959 granted permission. The land stood converted to commercial use by UIT. Subsequently transfer of jurisdiction of land does not amount to extend jurisdiction for a purpose which was over, to Municipal Corporation. After this no power is vested in

any other authority until the permission granted to the petitioner as aforesaid was revoked in accordance with Law. The Commissioner had no powers to by-pass the permission granted and if he at all had any grievance against that permission then he could have followed the procedure of putting a note of descent and refer the matter to the provisions of law as required or otherwise an appeal could be preferred the Act of 1959.

The petitioner has further contended that the land in question was a free hold land and, therefore, the question of change of the same to the commercial land was not necessary. Once the Committee grants permission the bureaucrats have no power, but the power has been exercised by them which was not vested in them. It was also urged by the petitioner that once exemption is granted by the authority under Section 20 of the Act of 1976 nothing remains for conversion because the State Government has already converted the land.

It has further been contended on behalf of the petitioner that before there was a restraint put on the petitioner, no notice was given to him. The action of the respondents show flagrant violation of the principles of natural justice. The legal adviser of the

Municipal Corporation has advised that no conversion was necessary. It has further been contended that no source of law has been shown by the Municipal Board to show that they had the power to stop the construction.

During the course of hearing, the petitioner was asked to produce the original patta of the land possessed by the owner which is possessed by him. The same was produced which shows that the land was purchased by the erstwhile owner of the land as a bungalow. Land was later used as a cinema land.

Per contra, the learned counsel for the respondent submitted that the whole edifice of the case as prepared by the petitioner is under the misconceived notions of law and facts. The petitioner's case is based on the order of 14th July, 1995 passed under Section 20 (1) (A) of the Act of 1976, Annx.1. The order passed under the Act of 1976 can only mean and have the effect of exempting the land from the operation of chapter III of the Act. Otherwise it had no implication whatsoever. Exemption under the Act of 1976 cannot be construed that the land has been ordered to be converted for the purposes of the Municipal Act. There is nothing in the Act of 1976 to authorise the State Government to convert the land

for the purposes of Municipal Act, exercising powers under Section 20 of the Act of 1976. The order of conversion though exempted the land under Chapter III of the Act of 1976, it cannot mean to be exempted under the Municipalities Act. The purpose of exemption was limited for the purpose of exemption of the land from urban land ceiling.

It may be mentioned here that there were certain conditions mentioned in Annx.1. It was required that within six months petitioners will be required to produce maps and within three years construction will have to be completed. Neither the map was produced nor construction was completed within the stipulated time in so called sanction. So much so the land came into possession of the petitioners in 1996 and the present construction has been started only in in 2006. Thus, none of the conditions as stated in Annx.1 has been completed because within three months of July 1995 no map was produced and until 1998 the construction has not been completed on the land allegedly converted by order Annx.1 . Thus, the petitioner cannot take refuge under Annx. 1.

The respondents have further contended that Municipal Act is an independent statute requiring the conversion of the land.

Permission to construct is an act which is independent of conversion. The Building Committee has been misguided by the petitioner under the guise of Annx.1. An attempt has been made by the petitioners to mislead this Court that Annx.1 is sufficient documentation of conversion. It has to be seen and observed that conversion for the purposes of Municipal Act is different than conversion as prescribed under the Act of 1976.

The learned counsel for the petitioner requested the Court to call for the original record of the Municipal Corporation which has also been called and looked into by the Court.

The case when examined and is seen in the light as canvased by the petitioners show, that they rely heavily on Annx.1. The petitioners' basic contention is that there is no question of any conversion being prayed for under the Municipalities Act because the land already stood converted under the Act of 1976. If the entire provisions of the Act of 1976 is examined then it is found that there the expression has been used as land. The purpose of the Act had been for equal distribution of the land to the Society . The Act of 1976 has since been repealed. Thus whatever was the purport , effect and intention of the orders passed under the Act it would remain

limited to the purpose of that Act only. If any other statute has any other requirement specifically or by implication provided for, it cannot be considered to be eclipsed by the provisions of the Act of 1976.

The Act of 1959 in the amended Section 173-A has the requirement for conversion. The conversion has to be in conformity with the master plan and to the satisfaction of the authorities as delineated in the Rajasthan Municipal Board (Land Conversion) Rules 2000 (hereinafter referred to as the 'Rules of 2000'). Conversion as mentioned in the Act of 1976 has not been considered to be sufficient for this purpose. Conversion as ordered by UIT was utilised for a part of the land in question. The permission of UIT cannot mean to exist for the entire land as it was not then processed. This can be simply inferred because charges of conversion for the entire land were not deposited.

Here it is seen that the petitioner has submitted an application for conversion purpose to UIT and has also paid flat rate conversion charges. Then at that point of time he has not conceived the relevance of Annx.1, whatever he understood, the requirement is that he needs to get the land converted. Once he

submits to the jurisdiction of UIT then he agrees that what ever be the position Annx.1 was not sufficient to conclude conversion. He was required to pay the conversion charges as UIT demanded. He in fact paid the charges but in part. Thus at one point of time the petitioner's own thinking was in conformity with the stand of Municipal Corporation. The petitioner has not denied paying the commercial charges , may be to the extent of minimum Rs.10/- per square meter. This shows that the petitioner had accepted that conversion charges are liable to be paid. The petitioner has canvassed two pronged arguments, one that Annx.1 has left no requirement of paying the conversion charges, two he himself agreed for paying conversion charges to UIT and in fact paid charges.

Here it is relevant to note Section 173-A which is quoted here for ready reference.

> "173-A. Restriction on change of use of land and power of the State Government to allow the change of use of land, - (1) No person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government , any

municipality, any other local authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, whatever it is in operation.

(2)In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal area for the purpose other than that for which such land – use was or is permissible , in accordance with the Master Plan, whatever it is in operation, or under any law for the time being in force.

(3)Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government or any authority authorised by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use :-

(i)from residential to commercial or any other purpose; or
(ii)from commercial to any other purpose; or

(iii)from industrial to commercial or any other purpose; or

(iv)from cinema to commercial or any other purpose :

Provided that rates of conversion charges may be, different for different

areas and for different purposes.

....

In this Section conversion from cinema to commercial is required to be made. It has neither been stated nor clarified as to how a bungalow got converted into cinema. For arguments sake it is taken that the authority converted the land from Residential to Cinema. Another assumption can be made that part of it was converted into commercial. But that would not be sufficient to conclude that in the instant case the entire land can be used as desired by the petitioner in terms of the law which is existing as on the day.

Section 173 A of the Act of 1959, as amended and applicable at the relevant time do not speak of a Multiplex Mall with cinemas and restaurants on the commercial lines. Whatever is provided in Section 173A of the Act of 1959 do not speak of such conversion. Nearest entry in the Section 173A of the Act of 1959 is 3 (iv) which speaks of cinema to commercial or for any other purpose. In the instant case it is cinema and commercial both inclusive. How can such conversion be handled and treated is a question which requires a new approach ? as treating it in residuary

part of Section 173A 3 (iv) of the Act of 1959. *Any other purpose* as contained in this Section is likely to cause confusion. Rules of 2000 speak in rule 2 (vi) that cinema is included in commercial use. This is beyond the provisions of the Act of 1959 in 173A 3 (iv). Thus a new dimension is added.

In the instant case, what is borne out from the facts is that the land in question was purchased by the former owner of the land ,as a bungalow. This gives rise to the inference that it was a residential plot. However, subsequently, a cinema has been constructed over the land. Construction of cinema was made after conversion or permission has not been established. What is pertinent to see is that the cinema had continued to exist for pretty long time. This would mean that by prescription the land got converted into cinema .

By the act of the petitioner UIT, Jodhpur, under whose jurisdiction the land earlier fell, had permitted part of the land to be converted into commercial. Both these incidents show that part of the land has been converted to be commercial and part of the land was converted for cinema. From the permission which has been granted to the petitioners it can be seen that the petitioners are proposing to

construct Multiplex, i.e. multiple cinema halls and commercial area. Such permission would not thus give a colour to any conversion which was either ordered or yet to be ordered. There is a statutory vacuum to handle the situation which is obtaining here .

Creation of the Statute being the domain of the Legislature, at the instance of the State Government, it would not be appropriate for this Court to venture into giving any interpretation of Section 173 A of the Act of 1959 which would cause hardships to every body. This is also seen in the background that multiplex is a new concept in vogue and was not in currency when the law came into being.

Thus, it would be appropriate for the petitioner and the Municipal Board both to approach the State Government who is the ultimate authority to under Section 173 A of the Act of 1959 to consider the question of conversion and plead before the State Government that in cases where it is neither purely commercial nor purely cinema, but a composite venture in that situation there being no clear law available a clear direction by either amending the law or issuing necessary clarification is necessary. The position may, therefore, be clarified by the State. In this regard both the parties,

the petitioner and the caveator , are directed to appear before the Secretary concerned in one week hence and the Secretary concerned , in consultation with the State Government, would pass necessary orders as are required under Section 173 A of the Act of 1959. The matter should not be delayed beyond four weeks hence because the petitioner has been made to stop his constructions while the process had begun.

In that view of the mater, with the aforesaid directions, the petition is disposed off as indicated above for decision of the State Government in accordance with law. In case the petitioner feels aggrieved thereafter, he will have the liberty to come to this Court.

(BHAGWATI PRASAD), J.

L.George